



Paper No.

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WASHINGTON DC 20007

MAILED

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OFFICE OF PETITIONS

In re Patent No. 7,376,430 : DECISION ON REQUEST FOR
Matsuda : RECONSIDERATION OF
Issue Date: May 20, 2008 : PATENT TERM ADJUSTMENT
Application No. 10/762,541 : and
Filed: January 23, 2004 : NOTICE OF INTENT TO ISSUE
Atty Docket No. 017344-0328 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on November 24, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred twenty-two (1122) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred twenty-two (1122) days is **GRANTED**.

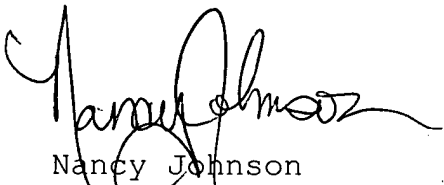
On February 1, 2010, the USPTO published a Federal Register notice that, inter alia, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR § 1.705(d). See *Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. § 154(b)(2)(A)*, 75 Fed. Reg. 5043 (Feb. 1, 2010) (notice). Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Court decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent.

As the initial petition for reconsideration of the patent term was filed on Monday, November 17, 2008, which was the first business day after 180 days after the patent issued, and only addressed the overlapping delay provisions of 35 U.S.C.

§ 154(b)(2)(A), it was filed within the outer limit of the USPTO's ability to conclude its PTA determination. The initial petition was dismissed on September 28, 2009, as the Office had not yet instituted the provision for limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR § 1.705(d). The present request for reconsideration of dismissal was filed within two (2) months of the mail date of the September 28, 2009 decision. As such, it was timely filed.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand one hundred twenty-two (1122) days.

Telephone inquiries specific to this matter may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,376,430 B2

DATED : May 20, 2008

DRAFT

INVENTOR(S) : Matsuda

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 677 days

Delete the phrase "by 677 days" and insert – by 1122 days--